

VINOD KAPOOR

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v.

STATE OF GOA & ORS.

(Civil Appeal Nos. 8643-8644 of 2003)

OCTOBER 03, 2012

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[A.K. PATNAIK AND SWATANTER KUMAR, JJ.]

Constitution of India, 1950 – Article 136 – Maintainability of appeal by way of Special Leave under Article 136 against an order of the High Court after an earlier Special Leave Petition against the same order had been withdrawn without any liberty to file a fresh Special Leave Petition – Held: Not maintainable – As the appellant had withdrawn the Special Leave to Appeal against the order dated 29.01.2000 of the High Court with permission to pursue his remedy by way of review instead and had not taken the liberty from the Supreme Court to challenge the order dated 29.01.2000 afresh by way of special leave in case he did not get relief in the review application, he was precluded from challenging the order dated 29.01.2000 of the High Court by way of fresh Special Leave to Appeal under Article 136.

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Abhishek Malviya v. Additional Welfare Commissioner and Another (2008) 3 SCC 108 – relied on.

Board of Control for Cricket in India and Another v. Netaji Cricket Club and Others (2005) 4 SCC 741: 2005 (1) SCR 173; Kunhayammed and Others v. State of Kerala and Another (2000) 6 SCC 359: 2000 (1) Suppl. SCR 538 and Gangadhara Palo v. Revenue Divisional Officer and Another (2011) 4 SCC 602: 2011 (3) SCR 746– cited.

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Constitution of India, 1950 – Article 136 – Maintainability of appeal by way of Special Leave under Article 136 against the order of the High Court rejecting an application for review

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A *of the appellant – Held: Not maintainable – The order rejecting the application for review is not appealable by virtue of the principle in Order XLVII, Rule 7 CPC – Code of Civil Procedure, 1908 – Order XLVII, r.7.*

B *Shanker Motiram Nale v. Shiolalsing Gannusing Rajput (1994) 2 SCC 753; Suseel Finance & Leasing Co. v. M. Lata and Others (2004) 13 SCC 675 and M.N. Haider and Others v. Kendriya Vidyalaya Sangathan and Others (2004) 13 SCC 677 – relied on.*

C **Case Law Reference:**

	(2008) 3 SCC 108	relied on	Para 5, 9, 11
	(1994) 2 SCC 753	relied on	Para 5, 10
D	(2004) 13 SCC 675	relied on	Para 5
	(2004) 13 SCC 677	relied on	Para 5
	2005 (1) SCR 173	cited	Para 6
	2000 (1) Suppl. SCR 538	cited	Para 6
E	2011 (3) SCR 746	cited	Para 6

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8643-8644 of 2003.

F From the Judgment & Order dated 6.12.2000 and 29.1.2000 of the High Court of Bombay at Panaji-Goa in Civil Review Petition No. 17/2000 and Civil Writ Petition No. 253/1999.

G Vinod Kapoor (In-Person).

Mukul Rohatgi, A.V. Rangam, A. Subhashini, Kiran Bhardwaj, B.K. Prasad. Shreekant N. Terdal, Hari Shankar K, Ninad Laud, Vikas Singh Jangra, Swati Mantri for the Respondents.

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The Order of the Court was delivered by

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A.K. PATNAIK, J. 1. These are appeals by way of special leave under Article 136 of the Constitution against the orders of the Bombay High Court at Goa dismissing Civil Writ Petition No. 253 of 1999 and Civil Review Petition No. 17 of 2000.

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2. The facts very briefly are that the respondent no. 8 was served with a show-cause notice dated 26.11.1996 by the North Goa Planning and Development Authority (for short 'the Authority'). In the show-cause notice, it was alleged that the respondent no. 8 had constructed a residential bungalow on a land in Survey No.250/12 without the prior permission of the Authority as required under Section 44 of the Town and Country Planning Act, 1974 (for short 'the Act'). It was also alleged in the show-cause notice that there was no proper access road to the property as required under the Act and that the construction was within a distance of 100 Mtrs. from Zuari river and was in breach of the Coastal Regulation Zone notification issued under the Environment (Protection) Act, 1986. By the show-cause notice, the respondent no.8 was asked to show-cause why action should not be initiated under Section 52 of the Act for demolition of the construction. By a communication dated 10.12.1996, the Town Planner of the Authority also informed the Chief Officer, Panaji Municipal Council, that the respondent no. 8 had obtained permission from the Municipal Council to make the construction on the land in Survey No. 250/12, Village Taleigao, by misrepresenting the facts and, therefore, the permission may be revoked. Thereafter, a notice dated 18.11.1997 was issued by the Municipal Council to the respondent no. 8 directing him to stop the construction work immediately and to show-cause why the licence granted to him for the construction of the building on the land in Survey. No. 250/12 of Taleigao Village should not be revoked.

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3. The appellant also filed Writ Petition No. 253 of 1999 before the Bombay High Court at Goa alleging that the structure

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A made by the respondent no. 8 on the land in Survey No.250/12 in Village Taleigao contravenes the provisions of the Coastal Regulation Zone Notification dated 19.02.1991 inasmuch as it was within 100 Mtrs. from the river Zuari in Costal Regulation Zone (CRZ) III area. The High Court called for a report from the
 B Director of National Institute of Oceanography after inspection of the property of the respondent no.8 and a Senior Technical Officer of the National Institute of Oceanography submitted a report dated 24.01.2000 saying that the structure in question was not within 100 Mtrs. of the High Tide Line (HTL). After
 C perusing the report, the High Court dismissed the writ petition by order dated 29.01.2000

4. Aggrieved, the appellant filed Special Leave Petition under Article 136 of the Constitution against the order dated
 D 29.01.2000 of the Bombay High Court at Goa dismissing the writ petition. When the Special Leave Petition was taken up for hearing by a three-Judge Bench on 22.11.2000, a submission was made on behalf of the appellant before the Court that the appellant had filed a Review Petition before the High Court and that the learned counsel for the appellant had instructions to
 E withdraw the Special Leave Petition and the Court dismissed the Special Leave Petition as withdrawn. Thereafter, the High Court took up the hearing of the Review Petition and rejected the Review Petition by order dated 06.12.2000.

F 5. When the appeals were taken up for hearing, a preliminary issue was raised on behalf of the respondent no.8 that the Civil Appeals by way of Special Leave Petition were not maintainable. According to the learned counsel for the respondent no.8, the appeal against the order dated
 G 29.01.2000 of the High Court in Writ Petition No. 253 of 1999 is not maintainable as the appellant had earlier challenged the said order before this Court in a Special Leave Petition, but had withdrawn the same and, therefore, the order dated 29.01.2000 of the High Court dismissing Writ Petition No. 253

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of 1999 filed by the appellant had become final and could not be challenged again. In support of this submission, he relied on the decision of this Court in *Abhishek Malviya v. Additional Welfare Commissioner and Another* [(2008) 3 SCC 108]. He submitted that the appeal against the order dated 06.12.2000 of the High Court rejecting Civil Review Application No. 17 of 2000 of the applicant was also not maintainable in view of Order XLVII Rule 7 of the Code of Civil Procedure, 1908 (for short 'the CPC'), which provides that an order of the Court rejecting an application for review is not appealable. He submitted that this Court has held that the principle of Order XLVII, Rule 7 is applicable to appeals by way of Special Leave under Article 136 of the Constitution in *Shanker Motiram Nale v. Shiolalsing Gannusing Rajput* [(1994) 2 SCC 753], *Suseel Finance & Leasing Co. v. M. Lata and Others* [(2004) 13 SCC 675] and *M.N. Haider and Others v. Kendriya Vidyalaya Sangathan and Others* [(2004) 13 SCC 677].

6. The appellant, on the other hand, submitted that the appeals against the order dated 29.01.2000 of the High Court in the Writ Petition and the order dated 06.12.2000 of the High Court in the Review Petition were maintainable under Article 136 of the Constitution. In support of this submission, he relied on the decisions of this Court in *Board of Control for Cricket in India and Another v. Netaji Cricket Club and Others* [(2005) 4 SCC 741], *Kunhayammed and Others v. State of Kerala and Another* [(2000) 6 SCC 359] and *Gangadhara Palo v. Revenue Divisional Officer and Another* [(2011) 4 SCC 602].

7. We have considered the submissions of the learned counsel for respondent no.8 and the appellant and we find that the earlier Special Leave Petition filed by the appellant against the order dated 29.01.2000 of the High Court dismissing Writ Petition No. 253 of 1999 was dismissed as withdrawn by order dated 22.11.2000, which is quoted hereinbelow:

"It is submitted that the petitioner has filed a review petition in the High Court and, therefore, learned counsel has

A instructions to withdraw the petition. The Special Leave
Petition is, accordingly, dismissed as withdrawn.”

B The order dated 22.11.2000 of this Court quoted above would
show that no liberty was taken by the appellant to file a fresh
Special Leave Petition under Article 136 of the Constitution
against the order dated 29.01.2000 of the High Court and the
Special Leave Petition was withdrawn by the appellant saying
that he had filed a review petition before the High Court. Hence,
this Court appears to have permitted the appellant to pursue
his remedy by way of review before the High Court.

C 8. The question that we have to decide is whether the
appeal will lie against the order dated 29.01.2000 of the High
Court dismissing Writ Petition No.253 of 1999 when an earlier
Special Leave Petition against the said order dated
D 29.01.2000 of the High Court was filed by the appellant but was
withdrawn with the permission of this Court to pursue his
remedy by way of review against the said order dated
29.01.2000 of the High Court. As the appellant has withdrawn
the Special Leave to Appeal against the order dated
E 29.01.2000 of the High Court with permission to pursue his
remedy by way of review instead and had not taken the liberty
from this Court to challenge the order dated 29.01.2000 afresh
by way of special leave in case he did not get relief in the review
application, he is precluded from challenging the order dated
F 29.01.2000 of the High Court by way of Special Leave to
Appeal under Article 136 of the Constitution.

G 9. In *Abhishek Malviya v. Additional Welfare
Commissioner and Another* (supra), cited by the counsel for
respondent No.8, the order dated 13.03.1997 of the Madhya
Pradesh High Court sustaining the order of compensation
passed by the Additional Welfare Commissioner was
challenged before this Court in a Special Leave Petition and
by order dated 04.05.1999 this Court dismissed the Special
Leave Petition as withdrawn and when the fresh appeal by way
H of special leave under Article 136 of the Constitution was filed,

this Court held that the fresh appeal is liable to be dismissed as not maintainable. Para 8 of this Court's order in the aforesaid case of *Abhishek Malviya v. Additional Welfare Commissioner and Another* (supra) is quoted hereinbelow: A

"8. We find no merit in appellant's contention. The order dated 4-5-1999 of this Court specifically refers to the error in the order describing the appellant as "deceased" and dismissed the SLP as withdrawn with the following observation: "He wants to apply to the Additional Welfare Commissioner for correction. We express no opinion in that behalf". No liberty was reserved to file a fresh appeal or seek review of the order dated 13-3-1997 on merits. The order dated 13-3-1997 having attained finality, his efforts to reagitate the issue again and again is an exercise in futility. We are therefore of the view that appeal is liable to be dismissed. B
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10. Moreover, on the High Court rejecting the application for review of the appellant, the order rejecting the application for review is not appealable by virtue of the principle in Order XLVII, Rule 7 of the CPC. In *Shanker Motiram Nale v. Shiolalsing Gannusing Rajput; Suseel Finance & Leasing Co. v. M. Lata and Others* and *M.N. Haider and Others v. Kendriya Vidyalyaya Sangathan and Others* (supra) cited by the learned counsel for respondent No.8, this Court has consistently held that an appeal by way of Special Leave Petition under Article 136 of the Constitution is not maintainable against the order rejecting an application for review in view of the provisions of Order XLVII, Rule 7 of the CPC. E
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11. There is nothing in the decisions cited by the appellant to show that this Court has taken a view different from the view taken in *Abhishek Malviya v. Additional Welfare Commissioner and Another* (supra) with regard to maintainability of an appeal by way of Special Leave under Article 136 of the Constitution against an order of the High Court after an earlier Special Leave Petition against the same G
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A order had been withdrawn without any liberty to file a fresh Special Leave Petition. Similarly, there is nothing in the decisions cited by the appellant to show that this Court has taken a view that against the order of the High Court rejecting an application for review, an appeal by way of Special Leave under Article 136 of the Constitution is maintainable.

12. In the result, we hold that the Civil Appeals are not maintainable and we accordingly dismiss the same. We, however, make it clear that we have not expressed any opinion on the merits of the case of the appellant or on whether the Authority or the Municipal Council could under law issue the notices to the respondent no. 8 or take any action in respect of the construction made by him on the land in Survey No.250/12 in Village Taleigao.

D B.B.B. Appeals dismissed.